

§ 503.5

(2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, section 207 of the INA, is granted asylum under 8 U.S.C. 1158, section 208 of the INA, or is an alien otherwise authorized under the immigration laws to be employed in the U.S.; or

(3) An individual who is not an unauthorized alien (as defined in 8 U.S.C. 1324a(h)(3), section 274a(h)(3) of the INA) with respect to the employment in which the worker is engaging.

Wage and Hour Division (WHD) means the agency within the Department of Labor with investigatory and law enforcement authority, as delegated from DHS, to carry out the provisions under 8 U.S.C. 1184(c), section 214(c) of the INA.

Wages mean all forms of cash remuneration to a worker by an employer in payment for personal services.

§ 503.5 Temporary need.

(a) An employer seeking certification under 20 CFR part 655, subpart A, must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary.

(b) The employer's need is considered temporary if justified to the CO as one of the following: A one-time occurrence; a seasonal need; a peakload need; or an intermittent need, as defined by DHS regulations.

§ 503.6 Waiver of rights prohibited.

A person may not seek to have an H-2B worker, a worker in corresponding employment, or any other person, including but not limited to a U.S. worker improperly rejected for employment or improperly laid off or displaced, waive or modify any rights conferred under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part. Any agreement by an employee purporting to waive or modify any rights given to said person under these provisions will be void as contrary to public policy except as follows:

(a) Waivers or modifications of rights or obligations hereunder in favor of the Secretary will be valid for purposes of enforcement; and

(b) Agreements in settlement of private litigation are permitted.

§ 503.7 Investigation authority of Secretary.

(a) *Authority of the Administrator, WHD.* The Secretary of Homeland Security has delegated to the Secretary, under 8 U.S.C. 1184(c)(14)(B), INA section 214(c)(14)(B), authority to perform investigative and enforcement functions. Within the Department of Labor, the Administrator, WHD will perform all such functions.

(b) *Conduct of investigations.* The Secretary, through the WHD, may investigate to determine compliance with obligations under 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part, either under a complaint or otherwise, as may be appropriate. In connection with such an investigation, WHD may enter and inspect any premises, land, property, worksite, vehicles, structure, facility, place and records (and make transcriptions, photographs, scans, videos, photocopies, or use any other means to record the content of the records or preserve images of places or objects), question any person, or gather any information, in whatever form, as may be appropriate.

(c) *Confidential investigation.* The WHD will conduct investigations in a manner that protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the obligations imposed by 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, subpart A, or the regulations in this part to the Secretary by advising any local office of the SWA, ETA, WHD or any other authorized representative of the Secretary. The office or person receiving such a report will refer it to the appropriate office of WHD for the geographic area in which the reported violation is alleged to have occurred.

§ 503.8 Accuracy of information, statements, data.

Information, statements, and data submitted in compliance with 8 U.S.C. 1184(c), INA section 214(c), or the regulations in this part are subject to 18